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Workshop on a participatory process for transforming policy into law, May 24-28, 1993

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Boston University

DRAFT AGENDA: WORKSHOP ON DRAFTING LEGISLATION
FOR RURAL DEVELOPMENT IN SOUTH AFRICA

May 24-May 28, 1993

(This draft is subject to change by the participants
at any time during the workshop)

Aim of workshop: To draft outlines of bills and accompanying memoranda of law directed to restructuring rural South African political economic institutions, using these as an occasion to learn the theory and methodology of legislative drafting for a new South Africa

I. Monday, May 24: Theory and methodology for using law to restructure institutions

A. 9-10:00 AM: Introductions: participants to explain where they are from, their major areas of work, and what they see as the priority rural problems requiring legislative action

B. 10:15-11:00: Introduction to the relation between law and development.

1. The function of law in directed social change.

a. Development not a matter merely of changed resource allocations, but also of institutional change.

(1) Institutions as repetitive patterns of behavior.

b. Law is government's only instrument to buttress, change abolish or initiate institutions (the instrumental use of law, as opposed to law as declarative of rights and duties).

c. Policy has no operative form until expressed in rules capable of implementation by the State -- i.e., law.

d. The limits of law to bring about change therefore are limits on government's capacity to make policy; policy which does not honor law's limits must fail.

2. The educational theory behind this workshop.

a. Learning the limits of law is best done by drafting a specific bill -- just as the best way to learn to ride a bicycle is by riding a bicycle.

follow from explanations warranted by evidence

- (1) Replace DBSA by another organization
- (2) Restructure DBSA
- (3) Others?

d. Implement proposed law changing status of DBSA and evaluate consequences (will never turn out exactly as anticipated)

D. 2-5:00 PM: Small groups to discuss and report on the nature of specific institutional difficulties confronting South African rural poor:

1. Small groups to assess the available evidence as to the nature and scope of the relevant problems in the following areas (to be revised by participants as desired) and consider whose and what behaviors comprise them:

- a. Access to fertile land and adequate water supply;
- b. Availability of inputs at appropriate levels of technology;
- c. Rural finance, including DBSA and other sources of credit;
- d. Access to markets (including transport, storage and processing);
- e. Extension education for African farmers and small scale rural entrepreneurs.

2. Groups report to plenary for general discussion concerning, for each area, whose and what behaviors constitute the difficulty.

II. May 25: Formulating and testing explanations of rural South Africans' problems as the basis for drafting effective legislation for overcoming them.

A. 9-12:00 AM: Sources of hypotheses explaining the behavior that constitutes the difficulty

1. Alternative grand theories (neoclassical, basic needs/ structuralism, transforming institutionalism) and associated explanatory categories as possible sources of general explanations of rural South African problems.

- a. Teasing specific explanatory hypotheses out of

(2) its potential for maximizing people-participation in decision-making;

(3) its impact on eliminating apartheid and its consequences, women, children, the poor, and the environment; and

(4) the opportunities it provides for corruption and the development of a bureaucratic bourgeoisie.

e. the proposal contains built-in processes for its own evaluation;

2. Generating alternative possible legislative solutions.

a. Comparative law

b. Scholarly and professional literature

c. Own ideas

3. Choosing between them:

a. Ensuring that proposed draft legislation addresses causes of difficulties as indicated by explanations generated by considering ROCCIP categories and warranted by available evidence.

b. Ensuring adequate implementation

(1) Three frequent choices

(a) Transitive vs intransitive legislation

(b) Old or new implementing institution

(c) Reactive or proactive institution

(2) Analyzing the probable behavior of an implementing institution.

c. Considering the social costs and benefits of implementing draft proposal, as described above.

B. 2-5:00 PM: Small groups to outline and report to the plenary on the draft legislation they would propose for their problem area, covering the following points:

1. Describing the alternatives considered

(1) 'coffee klatsches' or 'quilting bees'

(2) structured group analyses

b. A case study from Zimbabwe, Zambia and Tanzania

2. workshop participants discuss and compare their own experiences in implementing participatory research

B. 2-5:00 PM: Small groups to discuss and report to plenary on plans for participatory research to fill in gaps in outline draft memoranda of law and proposed bills

C. Plenary to decide future steps to be taken to advance preparation and presentation of the proposed legislative program for rural development in the new South Africa.